Ending Ecocide

GTI Roundtable

August 2016

A new movement of legal experts and citizen activists is calling for the codification of ecocide as a crime against peace in the International Criminal Court. Femke Wijdekop lays out the case for treating environmental despoliation as a crime as well as the barriers to doing so. Our panelists discuss the ecocide campaign and the broader need to protect nature in our legal structures.

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GREAT TRANSITION INITIATIVE
TOWARD A TRANSFORMATIVE VISION AND PRAXIS

Against Ecocide: Legal Protection for Earth

Femke Wijdekop

Abstract: The current legal regime allows states and corporations to despoil the environment with impunity. This injustice has inspired a new movement of legal experts and citizens calling for the codification of *ecocide* as a fifth crime against peace, joining genocide, crimes of aggression, crimes against humanity, and war crimes. Their work aims to transform our understanding of nature from property to an equal partner with humans in building sustainable societies. The political and enforcement hurdles are formidable, but an awakened and engaged citizenry, strengthened by the Paris climate agreement, may prove powerful enough to elevate the prevention of crimes against nature to an internationally recognized norm.

The Rights of Nature

Last summer, I sat in a Dutch courtroom and listened to a verdict that would make headlines around the world. The judges of The Hague District Court ruled that the government of the Netherlands had a legal obligation to act in the best interests of current and future generations by lowering its CO_2 emissions. For the first time, a court had established a "duty of care" towards future citizens in matters of climate policy.

This landmark verdict encouraged non-governmental organizations (NGOs) in Belgium, France, the Philippines, and other countries to seek climate justice through legal and human rights frameworks.[1] For example, a groundbreaking judgment in Seattle last fall ruled that the State of Washington had a constitutional obligation and public trust duty to preserve, protect, and enhance air quality for current and future generations.[2] The rise—and success—of climate litigation has been an exciting development in the legal landscape. Such litigation challenges short-term political thinking with legal action that focuses on the long-term consequences of today's decisions.

Initiatives to criminalize ecocide express an emerging ecocentric worldview in law.

An even bigger breakthrough might be on the horizon, as lawyers around the world are advocating for the introduction of a legal duty of care towards the natural world. This effort aims to make ecocide—the massive damage and destruction of ecosystems, such as the deforestation of the Amazon, the Deep Horizon oil spill, the Fukushima nuclear disaster, and Athabasca tar sands extraction—an international crime. Their strategy is to add ecocide to the Rome Statute of the International Criminal Court (ICC) as the fifth crime against peace (along with genocide, crimes of aggression, crimes against humanity, and war crimes), and to have ecocide law introduced in the national jurisdictions of the member states of the ICC.[3]

Initiatives to criminalize ecocide express an emerging ecocentric worldview in law that affords intrinsic value and rights to nature.[4] This duty of care toward nature demands that human laws be harmonized with nature's laws. To achieve this, we must act as "Earth guardians," giving voice and legal standing to nature's rights and interests when crafting legislation and public policy. In an ecocentric framework, it is not enough to integrate the interests of future generations in lawmaking; the interests of nature must also be integrated to do justice to our interconnection with and dependence on the natural world.

This ecocentric worldview challenges the dominant legal paradigm in which nature is seen as "property," and humans its owners. In prevailing legal and economic

systems, the human relationship with the natural world has been one of exploitation and domination, and environmental destruction has been accepted as collateral damage in the pursuit of profit. Ecocide law challenges the view of nature as a lifeless "object" for human use, drawing a clear line beyond which massive anthropogenic damage to ecosystems is a crime.

A Short History of Ecocide

Though the concept of ecocide may seem novel to some, it has been a part of environmental discourse for over four decades. The term was coined in 1970 by the American biologist Arthur Galston at the Conference on War and National Responsibility. In the 1950s, he had worked in a laboratory helping to develop a chemical component of the defoliant Agent Orange, infamously used in the Vietnam War to destroy vegetation and poison communities on a massive scale. Appalled by the use of his creation, Galston became an antiwar activist and the first person to label the massive damage and destruction of ecosystems as *ecocide*. The word derives from the Greek *oikos*, meaning "house or home," and the Latin *caedere*, meaning "to demolish or kill." *Ecocide* thus literally translates to "killing our home."

Ecocide law challenges the view of nature as a lifeless "object" for human use.

In 1972, Swedish Prime Minister Olof Palme explicitly referred to the Vietnam War as ecocide in his opening speech for the United Nations Conference on the Human Environment. "The immense destruction brought about by indiscriminate bombing, by large scale use of bulldozers and herbicides is an outrage sometimes described as ecocide, which requires urgent international attention," he expounded. The conference adopted the Stockholm Declaration, the first international legal document to explicitly recognize the right to a healthy environment. At the People's Forum, an unofficial event running parallel to the UN Conference, thousands of people took to the streets, demanding that ecocide be declared a crime.

The 1970s and 1980s saw extensive study and debate within the UN about expanding the 1948 Genocide Convention, with several countries advocating the inclusion of ecocide. In 1985, the official Whitaker Report recommended the inclusion of ecocide in the draft Code of Offences Against the Peace and Security of Mankind, the precursor to the 1998 Rome Statute. The following year, *ecocide* was defined in the draft Code as "a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment," language that was broadly supported by most members of the UN's International Law Commission. The 1991 version of the Code included draft Article 26: "An individual who willfully causes or orders the causing of widespread, long-term, and severe damage to the natural environment shall, on conviction thereof,

be sentenced." In 1995, however, such language was withdrawn from the draft code through a unilateral decision by the commission chairman, likely under pressure from a few states and the nuclear lobby.[5] Whatever the reason, ecocide was never included in the Rome Statute of the ICC.

Conceptual Comeback

The idea of codifying ecocide as an international crime has enjoyed a resurgence in recent years. In 2010, Scottish lawyer Polly Higgins proposed to the International Law Commission that the Rome Statute be amended to include ecocide, defining it as "the extensive damage to, destruction of, or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished." Notably, she speaks of the "inhabitants" of a territory instead of its "human population," aiming to protect not only humans, but also all other members of the animal kingdom.

The movement has been gaining momentum in political, academic, and legal circles.

Since 2010, Higgins has been seeking support for her ecocide amendment from heads of state, lawyers, business leaders, civil society, and the international community.[6] This year, she has focused in particular on the officials of Small Island Developing States, whose countries are under severe threat from intensifying storm activity and rising sea levels induced by climate change. Higgins's goal is to create a legal duty of care compelling the international community to provide assistance to these and other territories that suffer from such human-induced ecocide.

An emerging social movement, notably End Ecocide on Earth, has complemented this work. An international team of lawyers (French, American, and Togan) have drafted End Ecocide on Earth's own ecocide amendment to the Rome Statute, which focuses on protecting ecosystem services and the global commons (including the atmosphere, the oceans and seas beyond territorial waters, the Arctic, Antarctic, and migratory species). The team defines *ecocide* as "an extensive damage or destruction which would have for consequence a significant and durable alteration of the global commons or ecosystem services upon which rely a group or subgroup of a human population" within the framework of known planetary boundaries.[7] The protective space for the global commons and ecosystem services they propose aims to stop the exploitation of these resources resulting from national sovereignty and unbridled capitalism.

The movement has been gaining momentum in political, academic, and legal circles. At the climate conference in Paris this past December, the Ecuadorian president Rafael Correa, with the support of Bolivia and Venezuela, called for the creation of

an international court of environmental justice to punish crimes against nature and for the adoption of an international declaration of nature's rights. Argentinian Nobel Peace Prize winner and human rights activist Adolfo Pérez Esquivel has been advocating since 2009 on behalf of the International Academy of Environmental Sciences for the establishment of an international tribunal for crimes against the environment. Various legal scholars have also put forth detailed blueprints for making environmental destruction a crime under international law.[8]

A Tool for Peace

This increasing support for the international prohibition of ecocide comes at a time of unprecedented ecological crisis. Severe environmental damage engenders a cycle of violence that abrogates the rights to life, health, and security of people living in the affected areas. Furthermore, such destruction and pollution can lead to food scarcity, forced displacement, and conflict between displaced peoples and the inhabitants of the territories to which they migrate. In this way, the ecological crisis is closely connected to the social and humanitarian crises of the early twenty-first century.

The ecological crisis is closely connected to social and humanitarian crises.

Designating ecocide an international crime against peace can catalyze a transition to a green economy and a more peaceful global civilization. It would alert corporations and states that there are legal consequences to serious damage and destruction of ecosystems, and establish a normative threshold which it is illegal to cross.[9] Harmful extractive practices would thus become riskier for transnational corporations and their investors, stimulating greater investment in renewables and sustainable agriculture. Just as abolition in the nineteenth century radically changed people's view of slavery in a short period of time, so, too, does an international prohibition of ecocide promise to realign prevailing value systems, placing the preservation of ecological integrity above the profit motive.

Political consensus and enforcement remain formidable but surmountable barriers. Amending the Rome Statute requires a two-thirds majority of signatories, i.e., the heads of state for eighty-two countries. Small Island Developing States and Andean countries such as Bolivia and Ecuador, with indigenous cultures supportive of legal protection for the Earth, might formally propose the ecocide amendment at the ICC this year. If this proves successful, the next challenge would be to get Russia, India, China, and the United States on board. These major powers are not party to the ICC, complicating effective, long-term global enforcement of a prohibition of ecocide.

Enforcement of ecocide law under the Rome Statute would follow the "complementarity principle," under which the ICC would only intervene when national judicial systems fail and a state party is either unwilling or unable to bring

perpetrators of ecocide to justice. Of course, this will likely prove challenging. The ICC, lacking a "global" police force or other enforcement arm, depends on the cooperation of the international community and its own standing as a reputable international institution. Yet while enforcement of the prohibition of genocide under the Rome Statute has been a thorny challenge, genocide is now the exception, rather than the norm. The same will likely happen with ecocide. Adding ecocide to the Rome Statute as the fifth crime against peace will provide the legal tools for lawyers to act and speak on behalf of those harmed by massive environmental damage and destruction, making it increasingly unlikely that the international community will deem it acceptable for ecocide to occur.

Despite the immense challenges this movement faces, the December 2015 Paris climate agreement offers grounds for optimism. The move among investors from fossil fuels to renewables, the environmental advocacy of religious leaders such as Pope Francis, and the increasing pressure of climate litigation on policymakers suggest that a global ecological sensibility may be rising. Anchoring this sensibility in laws that protect the intrinsic value of the natural world would be a significant step in the Great Transition to a sustainable world.

Anchoring this sensibility in law would be a significant step in the Great Transition to a sustainable world.

Endnotes

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About the Author

Femke Wijdekop is a Legal Researcher at the Institute for Environmental Security and a Senior Expert in environmental justice at IUCN Netherlands. Previously, she worked as a researcher in the fields of international and constitutional law at the University of Amsterdam. For the past several years, she has been campaigning with End Ecocide in Europe to make ecocide the fifth crime against peace. Her published writings have focused on such issues as the emerging ecocentrism in law and the Urgenda climate case, in which she is a co-litigant. She holds a Masters of Law degree in international history from the Free University Amsterdam.

Roundtable

Rahul Goswami

The recent history of "global" approaches to the environment has shown that they began full of contradictions and misunderstandings, which have continued to proliferate under a veneer of internationalization. To provide but a very brief roster, there was in the 1970s the "Club of Rome" reports, as well as the United Nations Conference on Human Environment in 1972 (which produced the so-called Stockholm Declaration). In 1992, the UN Conference on Environment and Development (Rio de Janeiro) was held and was pompously called the "Earth Summit," where something called a "global community" adopted an "Agenda 21." With very much less fanfare also in 1992 came the Convention on Biological Diversity, and signing countries were obliged to "conserve and sustainably manage their biological resources through global agreement," an operational conundrum when said resources are national and not international. In 2000 came the "Millennium Summit," at which were unveiled the Millennium Development Goals, which successfully incubated the industry of international development but had almost nothing to do with the mundane practice of local development. In 2015 came the UN Sustainable Development Summit, which released a shinier, heftier, more thrillingly complex list of sustainable development goals. During the years in between, the UN Framework Convention on Climate Change and its associated satellite meetings (three or four a year) spun through every calendar year like a merry-go-round (it is 22 years old, and the very global CO2 measure for PPM, or parts per million, has crossed 400).

Looking back at some five decades of internationalization as a means to some sort of sensible stock-taking of the connection between the behaviors of societies (ever more homogenous) and the effects of those behaviors upon nature and environment, I think it has been an expensive, verbose, distracting, and inconclusive engagement (but not for the bureaucratic class it sustains, and the "global development" financiers, of course). That is why I find seeking some consensus between countries and between cultures on "ecocide" is rather a nonstarter. There

are many differences about meaning, as there should be if there are living cultures left amongst us. Even before you approach such an idea (not that it should be approached as an idea that distinguishes a more "advanced" society from one apparently less so), there are other ideas, which from some points of view are more deserving of our attention, which have remained inconclusive internationally and even nationally for fifty years and more. Some of these ideas are, what is poverty, and how do we say a family is poor or not? What is economy and how can our community distinguish economic activity from other kinds of activity (and why should we in the first place)? What is "education," and what is "progress"—and whose ideas about these things matter other than our own?

That is why even though it may be academically appealing to consider what ecocide may entail and how to deal with it, I think it will continue to be subservient to several other very pressing concerns, for very good reasons. Nonetheless, there have in the very recent past been some efforts, and some signal successes too, in the area of finding evidence and intent about a crime against nature or, from a standpoint that has nothing whatsoever to do with law and jurisprudence, against the natural order (which we ought to observe but for shabby reasons of economics, career, standard of living, etc., do not). These efforts include Bolivia's Law of the Rights of Mother Earth, whose elaborate elucidation in 2010 gave environmentalists much to cheer about. They also include the recognition by the UN Environment Programme, in incremental doses and as a carefully measured response to literally mountainous evidence, of environmental crime. This is what the UNEP now says, "A broad understanding of environmental crime includes threat finance from exploitation of natural resources such as minerals, oil, timber, charcoal, marine resources, financial crimes in natural resources, laundering, tax fraud and illegal trade in hazardous waste and chemicals, as well as the environmental impacts of illegal exploitation and extraction of natural resources."[1] Quite frank, I would say, and unusually so for a UN agency.

Moreover, there is the Monsanto Tribunal, which is described as an international civil society initiative to hold Monsanto—the producer of genetically modified (GM) seed, and in many eyes the most despised corporation ever—"accountable for human rights violations, for crimes against humanity, and for ecocide." In the tribunal's description of its rationale, ecocide is explicitly mentioned, and the tribunal intends to follow procedures of the International Court of Justice. It is no surprise that Monsanto (together with corporations like Syngenta, Dow, Bayer, and DuPont) is the symbol of industrial agriculture whose object and methods advance any definition of ecocide, country by country. This ecocidal corporation (whose stock is traded on all major stock markets, which couldn't care less about the tribunal) is responsible for extinguishing entire species and causing the decline of biodiversity wherever its products are used, for the depletion of soil fertility and of water resources, and for causing an unknown (but certainly very large) number of smallholder farming families to exit farming and usually their land, therefore also exiting the locale in which bodies of traditional knowledge found expression.[2] Likewise, there is the group of Philippine investigators, a Commission on Human Rights, who want forty-seven corporate polluters to answer allegations of human rights abuses, with the polluters being fossil fuel and cement companies, including ExxonMobil, Chevron, and BP, and the allegations include the roles of these corporations' products in causing both "global warming and the harm that follows."[3]

Such examples show that there is a fairly strong and active manifestation of the movement Femke Wijdekop is highlighting. However, to find such manifestations, one has to look at the local level. There, the questions pertain more tangibly to the who, what, and how of the ecological or environmental transgression, and the how much of punishment becomes more readily quantifiable (we must see what forms of punishment or reparation are contained in the judgments of the Monsanto Tribunal and the Philippine Commission).

Considering such views, the problem becomes more immediate but also more of a problem—the products of industrialized, mechanized agriculture that is decontextualized from culture and

community exists and are sold and bought because of the manner in which societies sustain themselves, consciously or not. It is easier to find evidence for, and easier to frame a prosecution or, the illegality of a corporation, or of an industry, than for the negligence of a community which consumes their products. So the internationalization (or globalization) of the idea of ecocide may take shape in a bubble of case law prose and citations from intergovernmental treaties but will be unintelligible to district administrators and councils of village elders.

My view is that searching for the concept which for the sake of semantic convenience we have called ecocide as an outcome of an "internationally agreed" idea of crime and punishment will ultimately not help us. I have such a view because of a cultural upbringing in a Hindu civilization, of which I am a part, and in which there exists an all-embracing concept, "dharma," that occupies the whole spectrum of moral, religious, customary, and legal rules. In this view, right conduct is required at every level (and dominates its judicial process too), with our literature on the subject being truly voluminous (including sacred texts themselves, the upanishads, various puranas, and works on dharma). Perhaps the best known to the West from amongst this corpus is the Arthashastra of Kautilya, a remarkable legal treatise dealing with royal duties which contains a fine degree of detail about the duties of kings (which may today be read as "governance"). This treatise includes the protection of canals, lakes, and rivers; the regulation of mines (the BCE analogue of the extractive industries that plague us today); and the conservation of forests. My preference is for the subject of ecocide and its treatment to be subsumed into the cultural foundation where it is to be considered for, when compared with how my culture and others have treated the nature-human question, it becomes evident that we today are not the most competent arbiters, when considering time frames over many generations, about how to define or address such matters. The insistence on "globalizing" views in fact shows why not.

Endnotes

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About the Author

Rahul Goswami is a UNESCO expert on intangible cultural heritage in the Asia-Pacific region. Since 2011, he has trained and advised government officials, researchers, traditional knowledge bearers, and practitioners on methods to identify, document, and safeguard traditional knowledge systems and intangible cultural heritage. He is an adviser to India's Ministry of Environment, Forests & Climate Change on the place of agroecology in the sustainable use of natural resources and the application of local knowledge in the Himalayan and hill regions. Earlier, he worked with the Ministry of Agriculture on the revitalization of the agricultural extension system through participatory methods.

Brian G. Henning

I read with great interest Femke Wijdekop's essay calling for ecocide to be codified as a fifth crime against peace. In that I am a philosopher and not a legal scholar, I am primarily interested in the ethical implications of her thesis.

I was very happy to see reference to and defense of an ecocentric framework that recognizes the intrinsic value of and direct duties owed to the non-human world. Our anthropocentric commitments run so deep that we often reenact them even as we attempt to overcome their implications. As the philosopher Eileen Crist has noted, the Anthropocene discourse is an instance of this.1 (For more on this and also on Thomas Berry, mentioned below, see my forthcoming essay, "From the Anthropocene to the Ecozoic: Philosophy and Global Climate Change," which will appear in Midwest Studies in Philosophy.) Similarly, definitions of sustainability, such as that in the 1987 Brundtland Commission, are often at best forms of intergenerational anthropocentrism, recognizing only the value of present and future humans.2 As Wijdekop rightly notes, "In an ecocentric framework, it is not enough to integrate the interests of future generations in lawmaking; the interests of nature must also be integrated to do justice to our interconnection with and dependence on the natural world."

As many scholars have noted, the root of our ecocidal impulse is Western modernity's delusory worldview, the key means by which our species has convinced itself that it is outside of and above the natural world. Aldo Leopold—arguably the originator of modern ecocentrism—presciently noted in the 1930s that we must shed this arrogant and self-destructive conceit. It is, he notes, an "evolutionary possibility and ecological necessity" that we come to recognize that we are not conquerors of the land; we are a part of, not apart from the wider community of life.3 Accordingly, an ecocentric moral framework contends that the baseline of morality is forms of living compatible with the flourishing of the whole community of life. (It is important to note

that, as with every field, there are important differences between various versions of ecocentrism. For instance, Arne Naess's ecological egalitarian Deep Ecology is quite different than Holmes Rolston's hierarchical ecocentrism.4) What does this mean for Wijdekop's proposal to add ecocide to the Rome Statute of the ICC?

As the great cultural historian Thomas Berry puts it, "What is needed is a governance and a jurisprudence founded in the supremacy of the already existing Earth governance of the planet as a single, yet differentiated, community. An interspecies jurisprudence is needed. The primary community is not the human community, it is the Earth community. Our primary obligations and allegiances are to this larger community."5 There are real problems with the ICC specifically and with contemporary international jurisprudence broadly. Adding ecocide to the Rome Statute will not be nearly enough, but it is a real and meaningful step in the right direction within the systems we've created.

Endnotes

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5. Thomas Berry, Evening Thoughts (Berkeley, CA: Counterpoint 2015), 20.

About the Author

Brian G. Henning is a professor in the Departments of Philosophy and Environmental Studies at Gonzaga University and serves as Gonzaga's Faculty Fellow for Sustainability. His work is focused on the intersection of metaphysics, aesthetics, and ethics, with a special focus on issues related to animals and the environment. Before coming to Gonzaga, he taught for five years at Mount St. Mary's University. Henning is the author of several books and articles, including the award-winning *The Ethics of Creativity: Beauty, Morality and Nature in a Processive Cosmos*. His latest book is *Riders in the Storm: Ethics in an Age of Climate Change*. He holds a BA from Seattle University and an MA, MPhil, and PhD from Fordham University.

Paul Nieuwenhuis

Despite the various issues raised by commentators, embedding something like what Wijdekop proposes in law will set a stake in the ground. This value is why many in the environmental movement still refer to the sustainability principle in The Great Law of the Iroquois Confederacy and why the Ley de la Madre Tierra ("Law of Mother Earth") in Bolivia is considered significant.

However, we must be mindful that this should only be a first step on a much longer journey. For one, protecting nature in this sense still confines our thinking within the "conservation" model, itself a result of our conceptual separation from "nature." This view—which allows us to "protect the planet" if and when it is convenient, rather than 24/7 as an integral part of all our decisions, as it should be—is gradually being challenged. We are slowly moving (back) to a position where we see ourselves as an integral part of ecological and planetary systems, a position from which the very concept of "nature," becomes meaningless. Protecting other parts of these systems therefore becomes integrated with looking after ourselves, and seeking to balance our activities with the interests of "others" becomes "natural."

Too many in the environmental movement still operate within the confines of current mainstream thinking, dominated as it is by what the ecologist Charles Krebs would describe as an "economic" rather than an "ecological" worldview. We are now, hopefully, in the process of making a gradual transition from a conservation model of environmentalism to a much more integrated, systems view of our role in wider ecological and planetary systems. Within this thinking, which should also allow that transition from the current economic model of society to an ecological model of society, the concept of "nature" itself should be challenged, as the very term implies it is something separate from us.

We need to recognize that we are an integral part of the systems on our planet, an integral part of various ecological systems and thereby gain an understanding that whatever we do to other

systems, species, or organisms will eventually impact on us. For this reason, we need to develop respect not only for those fellow travelers who are "animal" or "vegetable," but also those who are "mineral," whether man-made or not—an artificial distinction that is itself man-made. Any move to provide legal status for those "others" is therefore welcome, even if it is only the first step on a long conceptual journey.

About the Author

Paul Nieuwenhuis is co-director of the Centre for Automotive Industry Research at Cardiff Business School and the Electric Vehicle Centre of Excellence, both at Cardiff University. He has a long track record of studying the impact of the car on our environment and has published a string of books and articles on this topic, from *The Green Car Guide* (1992) to the innovative *Sustainable Automobility* (2014). This work has always been placed in the context of a broad overview of the automotive industry and its history, as exemplified by his edited *The Global Automotive Industry* (2015). In addition, he has engaged in advisory work for most vehicle manufacturers and many international institutions, as well as national and regional governments. He holds a PhD from Edinburgh University.

Robert Paehlke

Femke Wijdekop's "Against Ecocide" is an important piece, as it explores specific institutional and political means by which we can make progress globally toward sustainability, environmental protection, and social equity. I found the discussion of the early history of ecocide as a concept particularly helpful—likewise the idea of incorporating ecocide as a fifth crime against peace as a politically plausible possibility amidst many not-so-plausible ways of achieving global change.

Adding ecocide to the Rome Statute of the ICC is still a daunting challenge, but far from the least likely way to achieve change. Perhaps the greatest challenge here is getting the large nations not party to the treaty to accept ICC jurisdiction. That will require a considerable mobilization. It will also require a fortuitous moment when the missing nations might be motivated to be on side. That, however, can be achieved, and there may be a window to do so following the scare that Donald Trump's candidacy is casting on both America and the world. Achieving broader support for ICC jurisdiction makes adding ecocide seem easy by comparison. As Wijdekop indicates, there is already considerable global momentum in that direction.

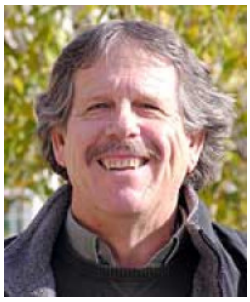
An additional piece of that momentum is discussed in a recent book by Canadian environmental lawyer David R. Boyd, *The Right to a Healthy Environment*. Boyd assesses several national constitutions that have incorporated the right to a healthy environment, and he advocates for inclusion of this right in Canada's Bill of Rights (a transformation of Canadian law first enacted under the current Prime Minister's father).

More broadly, legal action to counter short-term political thinking is, as noted by Wijdekop, crucial. One might add that it is also necessary to counter short-term *economic* thinking by changing balance sheet outcomes through policy or legal initiatives. For example, we might press for granting humans and nature standing before domestic courts with regard to the costs of climate change adaptation and other long-term costs—not only in criminal actions, but

also in civil law. Assisting small island communities through international agencies, as Wijdekop suggests, is important, but sufficient progress might also require cities like New York or Miami to successfully sue the oil industry and other firms for the cost of building walls to hold back rising seas.

So-called free trade treaties already allow corporations to sue governments if environmental regulations cost them money. Perhaps the citizen campaign that is needed would seek offsets that make it easier for governments (or civil society organizations) to seek costs and damages with regard to altered climate. These could include flooding, drought, or the cost to government programs of health effects (or even the cost of extra air conditioning related to excess heat). These costs can be quite accurately estimated. If even a small proportion of these future costs were passed on to those responsible, short-term and long-term corporate balance sheets might be rather drastically altered.

About the Author



Robert Paehlke, a political scientist, is Professor Emeritus of Environmental and Resource Studies at Trent University in Peterborough, Ontario, Canada. He was editor of the environmental journal/magazine *Alternatives* from its founding in 1971 until 1982 and continues to serve on its editorial board and blogs on the politics of the environment. He is author or editor of seven books, including *Hegemony and Global Citizenship: Transitional Governance for the 21st Century* (2014); *Some Like It Cold: the Politics of Climate Change in Canada* (2008); *Democracy's Dilemma: Environment, Social Equity and the Global Economy* (MIT Press, 2004) and *Environmentalism and the Future Of Progressive Politics* (Yale UP, 1991). In 1995 he edited *Conservation and Environmentalism: An Encyclopedia*.

Linda Sheehan

Thanks for this thoughtful and engaging discussion. My own experience over years of legal advocacy has led me to the conclusion that our governance systems are fundamentally flawed. We are an integral part of the natural systems on our planet, and yet our legal and economic systems fail to recognize this fact. Our environmental challenges cannot be remedied without addressing that disconnect.

The increasing commodification of nature by an economic system premised on nature as property, rather than partner, is accelerating the destruction of ecosystems and species globally. The economic strategies touted as solutions themselves demonstrate our fundamental biases. The terms sustainable development, green economy, natural capital, etc., illustrate our focus on the nouns of development, economy, and capital. Sustainable, green, and natural are just tangents, and they always will be without a fundamental reordering of our priorities.

I agree with Femke Wijdekop that we must "transform our understanding of nature from property to an equal partner with humans in building sustainable societies"—where "societies" includes the natural world, and not just humans imagined as separate from the natural world. Enacting a law of ecocide is one step in this process, and such a law can help expand the discussion from nature as property to nature as rights-bearing entity. But it cannot be the only step, or it too will become a tangent in the larger construct of economic growth at all costs.

How are we to move forward then in developing governance that reflects our integration with the natural world? If the problem is separation, then we can start by building relationships, both with people and with the place in which we live. Adam Smith has been assigned responsibility for our current economic system, but just as our economic system has been taken out of its context within the Earth, so has Smith been removed from the context of his larger worldview, which was grounded in community. It is rarely acknowledged that Smith also wrote that the

"wise and virtuous" person is one who is "at all times willing that his own private interest should be sacrificed to the public interest of his own particular order or society." He further offered that the "chief part of human happiness arises from the consciousness of being beloved." Smith recognized the importance of relationships to our well-being. Nurturing those relationships should be the cornerstone of our governance systems.

We can choose the culture and ethical foundation for our laws. Will we choose to continue to uphold a culture of separation and greed, or seek one of relationship and caring? We humans are all of these things, and there is no reason that we cannot state which ethics we want our laws and economic systems to support. The fact that our current economic system holds so tightly to our collective psyches that we cannot see its deepest flaws should not dissuade us. As Pablo Solon and others have said, why should it be easier to imagine the destruction of nature than the fundamental reordering of our economic system to respect people and planet?

We have taken great strides in the last century to recognize the inherent rights and dignity of people. The next step is to expand our recognized community further, to embrace the inherent rights and dignity of the natural world. Article 1 of the Universal Declaration of Human Rights recognizes that "[a]ll human beings are born free and equal in dignity and rights." As articulated by the Declaration's Drafting Committee, "the supreme value of the human person…did not originate in the decision of a worldly power, but rather in the fact of existing." Just as we protect humans' inherent rights from the excesses of potentially harmful governing bodies, so too should we protect our partners on Earth from the excesses of humans and human governance systems. The rights of all beings, including our own, are limited to the extent necessary to maintain the integrity, balance, and health of the larger whole.

Fortunately, examples of such nature's rights laws are increasing. In 2008, Ecuador adopted a constitutional provision endowing nature with inalienable, enforceable legal rights to exist, thrive, and evolve. These constitutional provisions have been successfully upheld in a number of judicial and administrative actions already. Bolivia has enacted two national laws on nature's rights.

New Zealand is also moving forward in this area, through court agreements between Maori iwi and the Crown government recognizing the independent legal rights of the Whanganui River and its tributaries, as well as Te Urewera National Park. Strategies for implementation of these agreements are being developed now.

Finally, roughly three dozen municipalities across the United States, from Pittsburgh, Pennsylvania, to Santa Monica, California, have passed local laws that create enforceable rights for natural communities and ecosystems to exist and flourish. This may prove to be the swiftest path to demonstrating initial success. For example, Santa Monica is considering the potential for a groundwater management ordinance consistent with the right of the aquifer to be "healthy," a far more stringent standard than under state law. Santa Monica further has set a goal of becoming 100% locally self-sufficient in water by 2020, recognizing its relationship with the natural systems on which it relies.

I would like to make two final points. First, if we and nature are connected, then the inherent rights of ecosystems and species are inextricably tied up with our own, human rights. The murder of Goldman Environmental Prize winner Berta Cáceras this year is just one of an increasing number of violent and illegal actions by government and corporate actors against defenders of the environment and those impacted by mega-projects that devastate communities. More can be read on this topic in a report we at the Earth Law Center released late last year on such "co-violations" of nature's rights and human rights.

And second, we need to think not just about the substance of the law (e.g., whether to enact nature's rights or ecocide into law), but also about the structure of the law and legal system, and its reflection of nature's systems. This is where the valuable discussion of restorative justice can weigh in, for example. The law should further be allowed to arise from the practice of living in concert with the Earth—through local restoration of natural systems, support for sustainable local economies, experiential education and teaching, and numerous other actions. The structure

of law as external to us needs to shift toward a system of law that is part and parcel of our daily lives, in community with each other and the Earth.

About the Author

Linda Sheehan is the Executive Director of the Earth Law Center, where she works to advance governance systems that recognize the inherent rights of nature. Prior to coming to ELC, she successfully advanced federal and state bills, policies, and litigation to enforce clean water laws, publicize environmental data, curtail sewage spills, establish marine parks, prevent oil spills, create sustainable water supply strategies, and fund environmental programs. She is a member of the IUCN's World Commission on Environmental Law and Summer Faculty at Vermont Law School, where she teaches "Earth Law." She is a contributing author to *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, *Rule of Law for Nature*, and *Wild Law in Practice*. She holds a BS in chemical engineering from the Massachusetts Institute of Technology, an MPP from UC Berkeley's Goldman School of Public Policy, and a JD from UC Berkeley Law School.

Neera Singh

I read Femke Wijdekop's essay on Ecocide with much interest, and I greatly appreciate the efforts being put in to ensure that ecocide is codified as a crime against peace and included in the Rome Statue of the ICC. Like many others, I feel that this will be an important step in the right direction, but not sufficient to deal with the systemic transition that we need.

I fully appreciate and recognize that we need to hold those who destroy the environment with impunity responsible and stop such actions. But it is equally important to recognize the ecocidal effects of our daily activities that lead to diminishing the quality of the habitat that we share with many others. In addition to the language of ecocide, we need a more affirmative language that propels action to embody "duty of care" at various scales.

Also, while I appreciate the ecocentric principles underpinning the call, like others, I am concerned that a conceptual separation between nature and culture continues to loom large in the discourse about "legal rights of Earth" and "crimes against nature." While I welcome the calls to check anthropocentric perspective, I believe that there is no other way for us to respond to the crisis other than from our human position. Ecocentric perspectives, as Femke Wijdekop also highlights, are deeply relational. And ecocide, more broadly speaking, is linked to destruction of our relationship with nature. While stopping large-scale "crimes against nature" is important, the efficacy of doing so through an international regime, given the existing power differentials, is not likely to be that great. Recognizing that ecocide results from the destruction of our relationship with nature, I think that the language of interconnectedness—interconnections of human and nonhuman well-being—needs to become stronger in this discourse.

While the term and discourse of ecocide is likely to be a good attention-grabber, and a heuristic device playing similar role as the term genocide, I feel that we need a more affirmative language about honoring life, interdependence, love, and solidarity, instead of the language of killing and

destruction, crime and punitive action. To me, "duty of care" seems to be good rallying call to use (perhaps in tandem with calls to end ecocide). "Duty of care"—or, rather, a culture of care—needs to be fostered across scales and not only through legal frameworks but through regimes of value and become a part of our moral framework.

About the Author

Neera Singh is an Assistant Professor at the Department of Geography and Program in Planning, University of Toronto, Canada. Her research interests include democratization of forest governance, conservation and development, and the affective dimensions of people's relations with forests. She uses interdisciplinary approaches to understand the dynamics of social-nature relations, local visions of conservation and development, and alternatives to market-based approaches to conservation. Prior to her current academic position, she worked for over a decade as a practitioner with issues of forest conservation and sustainable livelihoods in Odisha, India. She founded *Vasundhara*, a non-profit organization based in Bhubaneswar and provided leadership to *Vasundhara* in its formative years from 1991 to 2001.

Pella Thiel

The question of intent is often raised in discussions of ecocide. In Polly Higgins's proposal, which Wijdekop mentions, ecocide would not be a crime of intent. Nobody intends to destroy nature—it is a side effect, or externality, of gaining profit. And when profit is the driving force, as is the case today, there is no space for caring for nature. Thus, ecocide as a crime would be a great support for powerful individuals—like CEOs—who do not want to destroy nature but essentially have it in their job description.

I am personally active in the movement for an international law against ecocide, working mainly to build momentum around the idea in Sweden. We are quite surprised by the positive response we are getting from businesspeople. Many Swedish companies are supportive of the idea: they say, "We know we need new rules, and this seems like something that would mean a level playing field. We don't want to destroy nature, but we want to stay in business. If this law would apply for all, it would be good news for us."

The beauty of an ecocide law is that it would be a systemic response. As other commentators have noted, we are all culprits. Laws are our most clear common agreements. Can we agree to not treat nature like a cornucopia and a sewer? Addressing the most damaging projects, often driven by global corporations, would then be a good strategy that would also affect all our choices down the line. Wijdekop uses the metaphor of slavery. The situation was similar: anyone who could afford to use commodities like sugar or tobacco was complicit in slavery. But to end it, those small and often unconscious decisions were not the target. The target was to abolish the slave trade. And that had an effect not only on all the consumption decisions, but also on our common values, which is perhaps the most interesting aspect of an ecocide legislation. Like with slavery, it will not end ecocide. But it will mean that ecocide is the exception—not the norm, as is the case today. Laws and values are communicating vessels. The law will be broken—but that will mean breaking the law.

Ecocide law is an important step in the much-needed paradigm shift in how we relate to nature, as it calls for a stop to the most damaging activities. Without that, we most likely cannot move on to a regenerating presence on Earth. The behavior of corporations who are culprits of ecocide today is often described as psychopathic (were they people).

As I am locally active in the Transition Network, I very much understand the concerns some raise about how global institutions, like the ICC, are fragile and are themselves part of the problem. However, in the current state of affairs, I think we need them as stepping stones toward more local and healthy ways of doing things. Most of the global ecocidal economy works against local resilience and well-being. This has to stop for alternative responses to flourish.

Ecocide law is just one piece in a larger framework of rights of nature, without which I don't believe we could uphold any human rights.

About the Author

Pella Thiel is an ecologist and the co-founder of the Swedish Transition Network, End Ecocide Sweden (currently chairperson), Save the Rainforest Sweden, and the Swedish Network for Rights of Nature (currently coordinator). She serves as one of the experts in the UN Harmony with Nature initiative. She teaches ecopsychology and coordinated the first three Rights of Nature Conferences in Sweden. She holds an MSc in ecology from Stockholm University.

Allen White

International law in the form of agreements, accords, and pacts has played a central, if imperfect, role in managing transnational relations in the post–WWII era. Such instruments cover a broad spectrum of global issues ranging from trade and nuclear weapons to territorial waters and crimes against peace. In the environmental domain alone, some 100 instruments are in place. While these have brought a modicum of order to international relations, the persistence of geopolitical, ethnic, human rights, and ecological crises attests to the limitations of law in dealing with perils of an interdependent world. International law is a necessary but certainly not sufficient condition to ensuring a thriving planetary future.

Femke Wijdekop's description of the movement to amend the 1998 Rome Statute of the International Criminal Court to include ecocide as a fifth crime against peace reveals the complexity of international law as a mechanism for advancing justice in the twenty-first century. Over more than four decades, roughly in parallel with the modern environmental movement, the ecocide movement has shifted from a loosely defined aspiration to a concrete, actionable proposal. This trajectory mirrors the ongoing debates surrounding the efficacy and interplay "soft" and "hard" law.[1] A growing ecological consciousness beginning in the 1960s spurred enactment of foundational national environmental laws and regulations in the developed nations. These, in turn, catalyzed similar actions in many developing countries. New laws have strengthened the capacity of civil society and citizen pressure to confront intensifying transnational ecological crises. Environmentalism has gradually shifted from a concern of a few to recognition among the multitudes that ecological stewardship is not a luxury but, instead, a matter of human survival.

With increasing urgency, this evolving ecological ethos paved the way for dozens of agreements to address transboundary ecological threats, including ozone depletion, export of hazardous

materials, and climate disruption. These, in turn, strengthened the resolve of the UN and other multinational entities to design and advance global solutions to such threats. The landmark 1987 Brundtland Report, the 1992 Rio Declaration, and the 2000 Earth Charter are examples of emergent norms- and principles-based soft law that influence, and are influenced by, rules- and enforcement-based hard law. The Great Transition (GT) framework may be viewed through the lens of soft law. Rooted in the concept of wholeness expressed as individual well-being, societal solidarity, and planetary ecological resilience, GT's normative framework, like its predecessors, seeks to inform how scholars, policymakers, and citizens perceive the possibilities for a better world.

At any moment, the relationship between hard and soft law may be complementary or antagonistic. The lesson of the last few decades is that the soft-hard distinction is a false dichotomy. In fact, the two fall along a dynamic spectrum, differentiated more by the degree of obligation, precision, and delegation to independent third-party adjudicators than by intention or aspiration. In the real world, hard law at times hardens soft law, and vice versa. Wijdekop's observation regarding genocide, one of the four crimes embodied in the Rome Statute, is telling in this context. Even in the face of uneven ICC enforcement, the codification of genocide as an international crime against peace has sharpened awareness of the issue in both the public consciousness and mass media.

In Wijdekop's analysis, we see ecocide aligned with this playbook. As the relentless destruction of the biosphere continues apace, the urgency of global action intensifies. It is not a case of soft versus hard law—both have a critical role to play. The task ahead is to strengthen both approaches simultaneously such that the timing, robustness, and enforceability of future actions rise to the level of the global emergency.

Knotty questions remain. Should ecocide be judged on the basis of intent to damage (e.g., defoliation or water poisoning by a warring party) or as a byproduct (e.g., the irreversible loss of biodiversity occasioned by corporate clear-cutting of rainforests for palm oil and soybean

production)? As a witness to the tragedy of ecological destruction, we can say with certainty that Earth is agnostic on the question of intentionality or byproduct. Destruction is destruction.

Absent a truly global governance mechanism, can nation-state–driven multilateral accords, replete with self-interest and power imbalances, rise to the challenge of convergent threats that leave little time for concerted action? And how effective can the law be in the face of powerful economic interests driven by extraction, accumulation, and limitless growth? Is the "complementary principle" Wijdekop references—whereby the International Criminal Court would intervene in ecocide cases only when states fail to do so—a recipe for decades of delay at a time when global ecological transgressions demand immediate and forceful attention?

The flaws, promise, and ultimate indispensability of a global action in the face of ecocide and other crimes against peace was recently brought to my doorstop via the personal experience of a close friend. During the Balkan conflict from 1991 to 1995, she served as volunteer in a humanitarian effort to protect children from the ravages of a vicious conflict. During her service, she personally experienced the horrors of the war, including crimes orchestrated by Serb leader Radovan Karadzic. An initial indictment of Karadzic in 1995 was followed by his arrest in 2008 based on indictments on five counts of crimes against humanity (e.g., extermination, murder, and deportations) and four counts of violations of the laws or customs of war (e.g., murder, terror, and unlawful attacks on civilians). A trial that began in October 2009 involved 499 trial days, 337 prosecution witnesses, 6,671 prosecution exhibits, and 248 defense witnesses. A guilty verdict in March 2016 included genocide, extermination, and murder, and a forty-year imprisonment was reduced to twenty-eight years after taking into account Karadzic's prior accumulated time in detention.[2] Was justice served? For my friend, who has experienced twenty years of trauma since her service, the answer I suspect is "no—and never can be." The havoc wrought by Karadzic is indelibly etched in her psyche and those of thousands of others subjected to the atrocities of Balkan conflict.

What does the duration, complexity, and outcome of this case imply for the ecocide movement? Even in the case of the most egregious violations of the Rome Statute, a decade elapsed between indictment and verdict. If ecocide were to become a new crime against peace, its capacity to deter acts of ecocide and to hold accountable those who commit them would be severely curtailed if years of litigation and immense financial resources are required to adjudicate each case. But, based on the historical record, formalizing ecocide as a crime against peace would, as in the case of genocide, help infuse the concept in continuing public discourse surrounding a new global ethos essential to achieving a livable world.

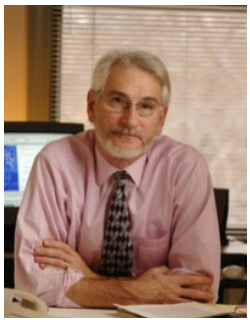
Justice in a planetary civilization is, and will remain, a work in progress. Ecocide law is poised to play a vital role in amplifying the voice of future generations who will live with consequences of near-term actions—and inactions—of government, business, civil society, and citizens. On that basis alone, legal protection of Earth merits the hard work that lies ahead to both enact and enforce the ecocide amendment to the Rome Statute.

Endnotes

1. Gregory Shaffer and Mark Pollack, "Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance," *Minnesota Law Review* 94 (2010): 706–799, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1426123.

2. See http://www.icty.org/case/karadzic/ for information on the trial and sentence.

About the Author



Allen White is Vice President and Senior Fellow at the Tellus Institute, where he directs the institute's Program on Corporate Redesign. He co-founded the Global Reporting Initiative and Corporation 2020, and founded the Global Initiative for Sustainability Ratings. He has advised multilateral organizations, foundations, government agencies, Fortune 500 companies, and NGOs on corporate sustainability, governance, and accountability. Dr. White has served on boards, advisory groups, and committees of the International Corporate Governance Network, Civic Capital, Instituto Ethos (Brazil), the New Economy Network, Business for Social Responsibility, and the Initiative for Responsible Investment at Harvard University. Dr. White has held faculty and research positions at the University of Connecticut, Clark University, and Battelle Laboratories and is a former Fulbright Scholar in Peru.

Author's Response

Author's Response

I appreciate the insightful points and questions that have been raised, and they have helped me to further develop my own thinking. In responding, I will begin with some general thoughts and then move on to specific points.

As many have pointed out, while an international prohibition of ecocide has a role to play in the transition to a more just and sustainable world (and I would argue that this role could be a significant one), it would be insufficient on its own to restore humanity's relationship with nature from one of exploitation and abuse to one of care and flourishing. Our abuse of the environment comes from a deep misunderstanding of our relationship with nature and of our place in it. The idea that nature is an "object" for our domination and exploitation is relatively recent, yet our legal and economic systems have been built up around this erroneous, harmful, and scientifically outdated notion. Modern science shows that we do not live in a "clockwork" universe, but one that is a network of dynamic relationships.

Law is a social construct that responds to new scientific insights and emerging harms (or at least should respond to them, if it is to keep its relevance and authority). The idea of prohibiting ecocide first came as a response to the emerging harm of biological and chemical warfare in the 1960s and 70s. The surging movement of lawyers and concerned citizens working today to have environmental destruction recognized as a legal wrong is responding to the ecological emergency of our own time. This movement's aims—making ecocide an international crime, creating an Ombudsman for Future Generations at governmental levels, granting rights to nature, and establishing a duty of care towards future generations through climate litigation—are expressions of an emerging worldview that recognizes our interconnectedness with nature and with each other.

These activists are informed by an understanding that the harm we do to the Earth will come back to haunt us. Ecocide law entails using criminal law as a tool to address and prevent environmental harm, just as the Urgenda climate case in the Netherlands used tort law to address failing climate policy. Roger Cox, Urgenda's lead counsel, grounded his arguments that the Dutch government was failing in its duty of care towards Dutch citizens because of its insufficient CO2 reductions in existing tort law, with all the required technicalities and references to established jurisprudence. Yet when asked to describe this case to which he had dedicated ten years of his life to, he called it "A Lawsuit of Love," because it was love for this planet and for future generations that had motivated him to start it and that enabled him to persevere for so many years.

Advocates of ecocide legislation are also coming at their work from such a place of love for the Earth and its inhabitants (humans or otherwise), and we choose to put our legal skills in service of a vision of a more compassionate and just world. And while law on its own is not able to create harmonious relationships, it does shape our norms and values, and it can make certain actions less appealing or even taboo. Law does not exist in a vacuum. The legislation that gave women the right to vote, itself an expression of a movement of emancipation, set in motion a process that fundamentally changed society's perception of women and their role in society. Citizens internalized the new norms to such an extent that it is astonishing to remember that it was only in 1955 that married women in the Netherlands gained the right to work in the civil service. If the universe is a network of relationships, so, too, is our society, and laws both catalyze and give expression to changes in consciousness.

Having offered this general commentary, I would like to address several specific criticisms of the proposal to incorporate ecocide as the fifth crime against peace in the Rome Statute of the International Criminal Court.

1. The suggestion of limiting the prohibition on ecocide to times of war, because the Rome Statute is geared towards the criminal liability of state officials (not CEOs/companies) and because this might be the only politically feasible or realistic option.

For Small Island Developing States that are facing an existential threat of loss of land and loss of lives, this is not a matter that can be addressed through wartime provisions. Indeed, to do so would be to abrogate our responsibilities for humanity as a whole. Do we go for a compromise that can never meet the requirements of those most at risk, or do we stand strong and call for what is required for advancing climate justice? The compromise strategy leads to loss of lives; the latter strategy saves lives.

Law is a tool for justice; international criminal law, like all law, is not static, but must reflect our growing understanding of the harm that we face. To remain complicit in ecocide on the basis that it does not fit an old model of law suggests that it is time to update our legal frameworks.

2. The point that a nation enforcing ecocide law would make itself "uncompetitive" in the global marketplace since affected companies would simply move elsewhere.

An important motivation for including ecocide in the Rome Statute of the ICC—as opposed to a regional treaty—is the global reach of the ICC and the *jus cogens* nature of its norms (fundamental, overriding principles of international law from which no derogation is permitted). Making ecocide a crime under the Rome Statute would create a level playing field since ecocide would be prohibited in all the state parties of the ICC. State parties would be obliged to prohibit ecocide in their national laws because the ICC works with the principle of complementarity—meaning that the first responsibility to prosecute the Rome Statute crimes lies with the states. If national courts are unable or unwilling to prosecute, the ICC can step in. State parties would not be allowed to tolerate ecocide on their territories any more than they are currently allowed to tolerate genocide or war crimes, no matter what "economic advantages" they might bring.

3. The concern about a lack of legitimacy and authority of the ICC.

It is true that the ICC is not as strong as it could be—indeed, that could be said about many judicial systems in the world. But that does not mean we should abandon it—it has a role that, in this time of increased transboundary crime, is required more than ever. This leaves us with a choice: Do we abandon the court, or do we strengthen it? We could replace and create a new International Environmental Tribunal (a process that would take a lot of time and resources), or we could find ways of ensuring the ICC is supported.

4. The idea that ecocide only be criminalized when intent can be proven.

Although the existing ICC structure is built around intentionality, the Rome Statute leaves the door open for potential future amendments that would provide otherwise [See Article 30: "*Unless otherwise provided*, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge" (emphasis added)].

While international criminal law is built around intentionality, environmental law is not always so restrictive. A person is said to have knowledge when that person should have known that her action could have caused the damage in question. The precautionary principle is unambiguous on this point ("where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environment degradation," from Principle 15 of the Rio Declaration). Ecocide is defined as serious and/or irreversible damages; the occurrence of such damage will require no proof of knowledge or intent if the perpetrator has not abided by the duty of care or acted with precaution. Moreover, it is general knowledge that the use of dangerous products per se implies liability when damages arise without the need of proving knowledge and intent.

5. The critique that the history of the ICC shows that there is a long time lag (often decades) between the start of an investigation and the actual verdict, and, in the case of ecocide, the culpable company will probably be dissolved, assets divided, and bonuses paid to executives who have disappeared.

Dissolving the company, dividing its assets, merging it with a novel entity, or changing its initial purpose does not permit a company to avoid criminal liability under the End Ecocide proposal. This proposal contains provisions that cover the very important consequences arising from the dissolution, division, or liquidation of companies' assets. In comparison, US courts in many occasions have been able to trace the past company in the newly created entities. For example, in the 2000 case *United States vs. Alcan Aluminum Corp.*, the judge held defendant Alcan Aluminum Corp. liable for cleanup costs at two hazardous waste sites traced back to the use of PCB hydraulic oils in the remelt operation in the late 1960s and 1970. As Monsanto was the sole domestic manufacturer of PCBs in the US, the Court ordered joint liability with regard to the cleanup of contamination, despite the fact that Monsanto ceased production of PCB-containing fluids, and that PCB fluids were no longer commercially available in the United States.

6. The discomfort with limited "legal language" in addressing concern for the well-being of complex ecosystems.

Rights language has its limitations, as pointed out by Tim Weiskel. It is important to see ecocide legislation as addressing the *worst* violations of the integrity of the Earth's ecosystem, and, as such, offering one step in harmonizing human laws with nature's laws. This process requires the expertise of diverse disciplines and bodies of knowledge, with a special role for law and biology. As used by ecocide law advocate Polly Higgins, ecocide refers to widespread, long-lasting, or severe environmental harm, with these terms defined under the 1977 United Nations Environmental Modification Convention as follows:

> (1) widespread: encompassing an area on the scale of several hundred square kilometers;
>
> (2) long-lasting: lasting for a period of months, or approximately a season;

(3) severe: involving serious or significant disruption or harm to human life, natural and economic resources, or other assets

Moreover, some have expressed a concern that advancing ecocide law relies on our adversarial legal system, which sets the "rights" of one group of humans (or humans acting as guardians for non-humans) against the rights of another group. The adversarial character of our legal system is not set in stone. The emerging Integrative Law Movement aims to create a legal system oriented towards values-based, creative, sustainable, and holistic solutions that build and strengthen relationships instead of a legal victory of one party at the expense of another. Ecocide law can be seen as part of this Integrative Law Movement since it is meant to help build a sustainable relationship between humans and the natural world and is aimed at protecting the rights of all the inhabitants of an ecosystem.

7. The point that ecocide law could strengthen the "adversarial paradigm" and that instead of international criminal law, Restorative Justice (with its emphasis on connection, empathy, compassion, and understanding) is necessary to heal the environmental and societal harm caused by ecocidal activity.

To protect those who cannot assert themselves, those who do not have political leverage or are even heard, yet suffer from ecological damage and destruction, the direct perpetrators of ecocide should be held responsible for the effects of their actions. Justice serves to protect society at large, and it becomes incumbent upon the legal system to ensure that abuse is stopped. Restorative Justice only works for those who are willing to take responsibility. At this point, not all those who (intentionally or unintentionally) cause ecocide are willing to take responsibility for—or even understand—the harm they do to the natural world, especially when they are desensitized from feeling their connection to that natural world. Although addressing and healing that disconnect from the natural world is where the ultimate solution lies, in the meantime, society has to be protected from the extreme harm actions resulting from such disconnectedness.

8. The point that we should address our own role in the ecocide instead of focusing on corporate perpetrators, since we, as consumers with high-carbon lifestyles, all bear responsibility for environmental damage and destruction.

I empathize with this point, but I think we should not ignore the power structures that exist in this world. We individuals do not have the leverage to solve the problem of ecocide when faced with the Goliath of polluting companies. The environmental destruction caused by these companies is often within the bounds of existing law since our legal system permits massive environmental damage and destruction as an "externality" of seeking profit.

Moreover, questions of individual responsibility enter into murky territory. We are not individually responsible for the total sum of environmental destruction if we are born into (and subject to) a system which does not acknowledge the intrinsic value of nature. The environmental crisis does require individual ecological awakening, awareness, and low-carbon lifestyles, but change on the individual level is not enough. We can try to live as organically as possible, yet without system change, without changing the legal framework within which economic activities take place, we will never fully succeed at restoring our relationship with nature.